

**STATE BAR OF CALIFORNIA  
COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL  
CONDUCT OF THE STATE BAR OF CALIFORNIA**

**Draft OPEN SESSION ACTION SUMMARY**

**Friday, March 27, 2015  
(10:00 am – 4:30 pm)**

**State Bar of California  
180 Howard Street  
Room 4A-C, 4th Floor  
San Francisco, CA 94105**

**Members Present:** Justice Edmon (Chair), Mr. Zipser (Co-Vice Chair); Mayor Brown, Mr. Chou, Ms. Clinch, Judge Clopton, Mr. Eaton, Mr. Ham, Mr. Harris, Mr. Kehr, Mr. Kornberg, Ms. Langford, Mr. Martinez, Mr. Peters, Mr. Rothschild, Judge Stout, and Mr. Mark Tuft.

**Advisors Present:** Ms. Chang, Justice Fybel, and Ms. Matthai.

**Liaisons Present:** Mr. Fortescue (California Supreme Court) and Ms. Krinsky (Board of Trustees)

**State Bar Staff Present:** Mr. Blumenthal (Office of Chief Trial Counsel), Mr. Difuntorum (Office of Professional Responsibility), Ms. Goldman (Office of General Counsel), Mr. Grenier (State Bar Court), Mr. Hawley (Acting Executive Director), Ms. Lee (Office of Professional Responsibility), Ms. Leighton, Ms. McCurdy (Office of Professional Responsibility), Mr. Mohr (Consultant/Reporter), and Mr. Andrew Tuft (Office of Professional Responsibility).

**Others Present:** Jonathan Arons, Merri Baldwin, Stephen Bundy, Lauren Crosby, Drew Dilworth, Scott Garner, Stanley Lamport, John Steele, Peter Stern, Neil Wertlieb.

## **I. CHAIR'S REMARKS**

### **- Welcome and Introductions**

The Chair welcomed all persons present and conducted introductions of the Commission members, advisors and liaisons.

### **- Commission's Relationship to the State Bar**

The Chair requested and Mr. Difuntorum provided an oral report explaining the role of the Commission as a sub-entity of the Board of Trustees.

### **- State Bar Staff Support, Liaisons, and Advisors**

The Chair requested and Ms. McCurdy provided an oral report on the administrative support and resources provided to the Commission by the State Bar.

## **II. KEY ADMINISTRATIVE CONSIDERATIONS**

The Chair gave the floor to representatives from the State Bar Office of General Counsel and Office of Professional Responsibility to address administrative issues.

**a. Open Meeting Notice Requirements**

Ms. Goldman provided an oral report explaining the State Bar's meeting notice and open meeting requirements.

**b. Media Contacts**

Ms. Goldman provided an oral report on the State Bar policies and practices for media contacts with the Commission. Mr. Difuntorum noted that in addition to media contacts, Commission members might be personally contacted by individuals or groups who would like to provide input on the work of the Commission. Commission members were asked to invite such persons to provide input in writing and to copy Mr. Difuntorum and/or Mr. Mohr so that the information can be shared with the entire Commission and properly filed for the Commission's records.

**c. Travel and Expense Reimbursement Policy**

Ms. McCurdy provided an oral report summarizing the State Bar policies and practices for travel and expense reimbursement.

**d. Schedule of Meetings**

Ms. McCurdy provided an oral report on the tentative schedule of meetings. Commission members were asked to promptly report unavoidable conflicts, if any, with the meeting dates.

**III. THE COMMISSION'S WORK-PLAN**

**e. The Commission Charter**

The Chair welcomed State Bar President Craig Holden for a special set presentation at 10:15 am. President Holden thanked the Commission members for agreeing to serve and summarized the Commission charter.

**f. Special Considerations Concerning Commission Work Schedule**

The Chair reported on letters exchanged between the Chief Justice of the California Supreme Court and the State Bar President concerning the establishment of a procedure for determining whether the study of a rule should be expedited. Staff clarified that any such decision to expedite the study of a rule likely would require certain adjustments to the Commission's work plan, including the tentative meeting schedule and list of assigned rules.

Following discussion, there was no objection to the Chair's appointment of the following Commission members as a standing working group assigned to evaluate any proposals to expedite the study of a rule: Mr. Zipser (lead); Ms. Clinch; Mr. Eaton; Mr. Martinez; and Mr. Tuft. This working group was assigned to consider ABA Model Rule 3.8 and was given the following tentative standard as a guide:

"Expedited consideration of a rule should be considered by the Commission (i) only if the early adoption of a rule will likely respond to ongoing harm, such as harm to clients, the public, or to confidence in the administration of justice, and (ii) only where the promulgation of the rule would likely ameliorate the harm."

In addition, the working group was assigned to assess whether the above tentative standard sets an appropriate standard for the Commission's assessment of a request to expedite the study of a rule.

**g. Methodology**

Mr. Difuntorum and Mr. Mohr provided an oral report on the Commission's methodology and work plan for completing its project by March 31, 2017. Regarding public input on the Commission's work, Mr. Difuntorum indicated that the work plan includes a formal public comment period in 2016 after the Commission has tentatively completed the drafting of comprehensive rule amendments. Mr.

Difuntorum also noted that visitors to the Commission's open session meetings are welcome and that the Chair has the discretion to recognize visitors who wish to address the Commission. In that connection, Mr. Difuntorum indicated that visitors should send a message to Lauren McCurdy (lauren.mccurdy@calbar.ca.gov) that identifies who will be attending and provides a summary of any requested oral presentation. Due to anticipated full agendas and limited meeting time, only a brief amount of time (about 5 minutes) can be expected for addressing the Commission.

#### **h. Assignments**

Mr. Difuntorum and Mr. Mohr provided an oral report on the tentative assignment of rules and drafting teams for Commission work anticipated to be assigned for action through January 2016. In part, Commission members were invited to inform staff if they would like to participate on a drafting team to which they have not been assigned. Mr. Mohr made himself available to participate on any teleconference to be scheduled for a drafting team and members were asked to copy Mr. Mohr and Mr. Difuntorum on any email messages exchanged among a drafting team.